

Mr. H. S. Anand i/b. M/s. Purnanand & Co. for Petitioners.

Ms. Mamta Sadh, AGP for Respondent No.1 in Writ Petition No. 1033 of 2007 and Writ Petition (L) No. 663 of 2007.

Mr. Vishal Phal, AGP for Respondent No.1 in Writ Petition (L) Nos. 664 of 2007 and 665 of 2007.

Mr. Shekhar Ingawale, AGP for Respondent No.1 in Writ Petition No. 709 of 2007.

Mr. S. G. Surana for Respondent Nos. 3, 5 to 31, 33 to 42 in Writ Petition No. 1033 of 2007, for Respondent Nos. 3 to 9 in Writ Petition (L) No. 663 of 2007, for Respondent Nos. 3, 4, 6 to 10 in Writ Petition (L) No. 664 of 2007, for Respondent Nos. 3, 4, 6 to 11 for Writ Petition (L) No. 665 of 2007 and for Respondent Nos. 3 to 7 in Writ Petition No. 709 of 2007.

CORAM : D.B. BHOSALE, J.
DATE : 17TH JULY, 2007.

P.C. :

1. Heard learned counsel for the parties.
2. This group of five Writ Petitions arises from the Orders passed by The Maharashtra Slum Areas (Improvement, Clearance and Re-development) Tribunal, Mumbai, whereby a slum area declaration vide Notification dated 25.1.2006 published in the Maharashtra Gazette dated 16.2.2006 under Section 4

of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short "the Act"), issued by the Competent Authority appointed under Section 3 of the Act has been upheld by the Tribunal. By the notification dated 16.2.2006, the Competent Authority has declared an area consisting of 9 Final Plots totally admeasuring 5542.46 sq. meters as slum. The petitioners in all the five petitions claim to be the owners of different final plots of different sizes, which form part of the total area covered under the said notification dated 16.2.2006. Though the petitioners are different, the notification under challenge in all the Writ Petitions being one and the same, they are being disposed of by this common order.

3. Mr. H. S. Anand, learned counsel for the Petitioners assailed the Judgment of the Tribunal on the following grounds:-

- (a) Firstly, he submitted that the notification under Section 4 of the Act is bad in law since it was issued in respect of nine final plots bearing Nos. 234 to 241 of T.P.S. III bearing C.T.S. No. 5802, 5805, 5806,

5807, 5804, 5803, 5800 and 5799 without amalgamating all the nine plots. He submitted that every final plot belongs to separate individual and therefore declaring all the nine plots by a common notification is not sustainable in law.

(b) Secondly, he submitted that the notification under Section 4 of the Act does not refer to the factual situation in the area and does not disclose satisfaction of the Authority regarding compliance of pre-requisites under Section 4 of the Act. In support of this contention, reliance was placed upon the Judgment of this Court in **Imam Meerasaheb Nadaf vs. State of Maharashtra & Ors.** [2005(1) ALL MR 82].

(c) Thirdly, he submitted that the Competent Authority and the Tribunal have overlooked that Shri Astavinayak Co-operative Housing Society Ltd., Ghatkopar (for short "the Society") while submitting the scheme as per modified DCR 33(10) in its Annexure I had made a statement that all the basic

amenities are available. It is against this backdrop the Competent Authority has committed an error of law in declaring the said area as slum at the instance of the very same society.

- (d) Lastly, he submitted that issuance of the notification under Section 4 of the Act without following the due procedure and the principles of natural justice is illegal and bad in law.

4. In so far as the first contention is concerned, at the outset, it may be noticed that such contention was not raised at any earlier stage of the proceedings by the petitioners. On this ground alone, the first submission deserves to be rejected since it involves disputed questions of facts. However, I would like to examine it in the light of the provisions of section 4 of the Act.

5. Section 4 of the Act deals with declaration of slum area, which reads thus:

4. Declaration of slum areas.

[(1) Where the Competent Authority is satisfied that -

(a) any "area" is or may be a source of danger to the health, safety or convenience of the public of that "area" of its neighbourhood, by reason of the "area" having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise; or

(b) the buildings in any "area", used or intended to be used for human habitation are -

(i) in any respect, unfit for human habitation; or

(ii) by reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of public of that "area",

the Competent Authority may, by notification in the Official Gazette, declare such "area" to be a slum area. Such declaration shall also be published in such other manner (as will give due publicity to the declaration in the area) as may be prescribed.]

Upon bare perusal of this provision, it is clear that the Competent Authority, which is empowered to declare "slum areas" need not make reference either to the owner or status of the property, as tried to be contended by Mr. Anand, learned counsel for the Petitioners. I do not find any illegality in

declaring the area covering more than one final plot as slum by common notification under Section 4 of the Act. The Section speaks about an "area" used or intended to be used for human habitation having inadequate or no basic amenities or being insanitary, squalid, overcrowded or otherwise. If any such "area" used for human habitation lacks basic amenities is covered under Section 4 of the Act, I do not find any legal impediment in declaring more than one final plots forming a part of such area as slum area under Section 4 of the Act. The first submission of Mr. Anand is accordingly rejected.

6. It is true that the notification under Section 4 of the Act, does not spell out or mention as to which of the basic amenities are lacking in the slum area. However, that by itself is not sufficient to quash and set aside the notification since the Competent Authority has followed the procedure and has produced ample material on record to substantiate its findings that basic amenities as envisaged under Section 4(1) of the Act have not been provided by the petitioners. Tribunal has analysed the said material on the record to arrive

at the satisfaction regarding the absence of basic amenities as required under Section 4 of the Act for the purpose of declaration of the area as slum area, by the said notification. The Judgment of this Court in Imam Meersaheb Nadaf, though in paragraph 7 records that: **"Mere reproduction of some of the expressions from the statutory provision, without referring to the factual situation in the area, cannot disclose satisfaction of the authority regarding compliance of pre-requisites under the said provisions of law."** In paragraph 8 observed, thus :

"8. Since the notification on the face of it does not disclose necessary requirements under Section 4(1) of the said Act having been complied with, undoubtedly, the authorities could have produced materials on record to establish that such requirements had been complied with, and it was necessary for the lower appellate authority to analyse the same so as to arrive at the finding whether there was sufficient materials on record for the authorities to arrive at the satisfaction regarding absence of basic amenities as per the requirements of statutory provisions for the purpose of declaration of the area to be slum area by the said notification. The lower appellate authority having dismissed the appeal without considering the relevant issues in the matter, has clearly acted illegally rendering its judgment to be bad in law."

7. In the present case, the Competent Authority has produced ample material on record to establish that the requirements under Section 4(1) of the Act had been complied with and it had analysed the same so as to arrive at the satisfaction regarding the absence of basic amenities as per the requirements of Section 4 for the purpose of declaration of the area as slum.

8. It appears that Shri Astavinayak Co-operative Housing Society (Proposed) had made an application dated 9.8.2004 setting the Authority in motion which ultimately issued the notification under Section 4 of the Act. It appears that before issuing show cause notice to the Petitioners, a panchnama was drawn regarding the conditions existing at the said area by the surveyor on 31.8.2004. On the basis of the actual position at the site, which was having inadequate or no basic amenities, a show cause notice dated 27.10.2004 was issued to the petitioners calling upon them to join the hearing on 6.11.2004 to show cause as to why the area should not be declared as slum under Section 4(1) of the Act. Though a reply was sent through an Advocate on 1.11.2004 the petitioners did not show

the cause as to why the notification under Section 4 of the Act be not issued except stating that they are interested in developing the property. It appears, thereafter a public notice dated 4.2.2005 was published by the respondents. That notice was also replied by the petitioners vide reply dated 18.2.2005 requesting the Competent Authority not to declare this property as slum and they may be allowed to develop their property. It is pertinent to note that this reply also did not give or set out any details regarding the basic amenities existing at the said area. At no point of time, whenever the Petitioners were given opportunity, they claimed that the area has all the amenities and that it did not fall within the ambit of Section 4 of the Act. It is against this background, the Competent Authority after examining the case on the basis of the material on record and after analysing the same, prepared a chart, which clearly disclose the position of the entire area covered by the notification under Section 4 of the Act. The chart indicates the observations recorded after considering the entire material on record and its analysis on the basis of which the Competent Authority has arrived at the satisfaction regarding

the absence of basic amenities. The chart, reads thus:

"a)	The plot Nos. and C.T.S. Nos. involved in the area.	Plot Nos. 234, 235, 236, 237, 238, 239, 240 and 241 with corresponding C.T. No. 5802, 5805, 5806, 5507, 5804, 5803, 5800 and 5799 respectively.
b)	Nos. of chawls	25
c)	No. of huts	378
d)	W.Cs.	Nil
e)	Public water taps	Nil, However, 20 to 25 residents have taken one water tap at their own cost.
f)	Lights	No public lights but each resident has taken independent electric meter.
g)	Gutters	Internal gutters are in damaged conditions and there are open gutters at some places.
h)	Lanes and passages	Narrow
i)	Public lights	Not provided.
j)	Road/footways	As the roads and the lanes are narrow and as there is no ventilation there is

foul smell.

k)	Remarks	The owner of the land on the plots under reference have not provided any basic amenities for the occupants."
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The analysis of the material on record, as observed by the Tribunal, vividly and clearly reveals the acute shortage of basic amenities in the area. The Authority, found that the area has inadequate or no basic amenities and it being insanitary, squalid and overcrowded, is unfit for human habitation. Similarly, lack of light, ventilation and sanitation facilities are clearly detrimental to the health and safety of the people of the area. In my opinion, the findings recorded by the Competent Authority and by the Tribunal are entirely based on the material on record. The contentions and objections raised by Shri Astavinayak Co-operative Housing Society and other Respondents in their written objections also appear to be well founded and correct. It is pertinent to note that even in the Memo of Petition also the Petitioners have not given details or any particulars regarding any basic amenities provided by them and available to the public of that area. It is clear from the material on record that the

public of the area is staying in unhygienic conditions due to lack of basic amenities available in the area. The Petitioners chose not to produce any evidence documentary or otherwise to show that they have provided basic amenities to the occupants of the said area. The record clearly supports the declaration of the area involved in all the Writ Petitions as slum under Section 4 of the Act. Upon mere perusal of the record and orders impugned, it is clear that ample opportunity was given to the petitioners at every stage of the proceedings.

9. It is common knowledge that there are several slum declarations in Mumbai City and Mumbai Suburban District, wherein there are no basic amenities provided to the slum dwellers, the Government of Maharashtra has decided to re-develop such slums and therefore framed D.C.R. No. 33(10) under which more than 70% slum dwellers can come together and form a Cooperative Society and redevelop the slum. Since 1991 till the end of 1995 the Slum Redevelopment Projects were being sanctioned and implemented by the Slum Development Committee under the Chairmanship of the Commissioner, Mumbai Municipal Corporation. In

December, 1995 the Government of Maharashtra amended the provisions of the Act and inserted Chapter 1A of the Act. Under Section 3A thereof the Government of Maharashtra established Slum Rehabilitation Authority for implementation of Slum Rehabilitation Projects in Mumbai City and Mumbai Suburban District. Under Section 3A(3) of the Act, it is the object, duty and function of the Slum Rehabilitation Authority to survey the slums and to implement the Slum Rehabilitation Projects and to do all such other acts, and things which are necessary for the implementation of Slum Rehabilitation Schemes. Consequential amendments were also made to Maharashtra Regional Town Planning Act. It is thus clear that the Authority acted under the provisions of the Act and it does not make any difference as to who set the Authority in motion. Merely because in the present case, Shri Astavinayak Co-operative Housing Society made an application and on their application, the Competent Authority followed the procedure and declared the area as slum, notification would not render invalid. It is also clear from the sequence of the facts mentioned above that principles of natural justice were followed by the Competent Authority while issuing the

Notification under Section 4 of the Act. It is against this background, I find absolutely no merit in these petitions and all the Writ Petitions accordingly stand dismissed.

(D. B. BHOSALE, J.)